



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Moltz Constructors, Inc.

**File:** B-257239

**Date:** May 13, 1994

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### DECISION

Moltz Constructors, Inc. protests the rejection of its bid as nonresponsive by the Department of the Interior under solicitation No. 1425-4-SI-10-0650. Specifically, Moltz contends that the facsimile copy of its bid bond is sufficient and its bid therefore should not have been rejected.

A bid bond is a form of security submitted to assure the government that a successful bidder will not withdraw its bid within the period specified for acceptance and, if required, will execute a written contract and furnish performance and payment bonds. See Federal Acquisition Regulation (FAR) § 28.001. The purpose of a bid guarantee is to secure the liability to the government for excess procurement costs in the event the successful bidder defaults by failing to execute the necessary contractual documents or to furnish the required payment and performance bonds. See FAR § 52.228-1(c); Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 CPD ¶ 34.

The determinative question concerning the acceptability of a bid bond is whether, in the event of a default by the bidder, the contracting agency could be certain that the surety would be bound, based on the information in the possession of the contracting agency at the time of bid opening. The King Co., Inc., B-228489, Oct. 30, 1987, 87-2 CPD ¶ 423. If the agency cannot determine definitely from the documents submitted with the bid that the surety would be bound, the bid is nonresponsive and must be rejected. Id.

As Moltz recognizes, we have specifically held that a facsimile copy of a bid bond is of questionable enforceability due to the fact that it includes only a reproduction of the surety's signature. The bid therefore must be rejected as nonresponsive. Since responsiveness cannot be established after bid opening, the defect in the bond

cannot be cured by the bidder's submission of the original bond subsequent to bid opening. See Global Engineering, B-250558, Jan. 11, 1993, 93-1 CPD ¶ 31; G & A Gen. Contractors, B-236181, Oct. 4, 1989, 89-2 CPD ¶ 308.

Moltz urges that we reconsider our view regarding the acceptability of facsimile bid bonds; we find no basis for doing so.

The protest is dismissed.

A handwritten signature in dark ink, appearing to read "John M. Melody", is written above the typed name.

John M. Melody  
Acting Associate General Counsel